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No. 89-47

In the Supreme Court of the United States

OCTOBER TERM, 1989

DWIGHT COLEMAN, ET AL., PETITIONERS

v.

CLAYTON K. YEUTTER, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that the Agricultural Credit Act of 1987 rendered moot the claims of those farmers whose debts with the Farmers Home Administration had been accelerated before May 7, 1987, but who still retained title to their property as of June 2, 1987.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 864 F.2d 604. The orders of the district court (Pet. App. 19a-25a, 26a-28a) are reported at 663 F. Supp. 1315.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 1988. A petition for rehearing was denied on February 1, 1989. Pet. App. 18a. On April 17, 1989, Justice Blackmun extended the time to file the petition for a writ of certiorari to June 30, 1989. The petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Farmers Home Administration (FmHA) makes loans to assist farm operations. This action is brought on behalf of a class of virtually all borrowers from the FmHA,[1] and concerns the FmHA's procedures for administering delinquent loans. In February 1984, the district court entered a permanent injunction precluding FmHA from taking any adverse action against delinquent members in the class until it had provided all class members with a notice containing specified elements, and an opportunity for a hearing. *Coleman* v. *Block*, 580 F. Supp. 194 (D.N.D. 1984).

Although the February 1984 injunction did not require FmHA to promulgate regulations, over the course of the next year the agency decided to do so. On November 1, 1985, the FmHA published final regulations in the Federal Register. 50 Fed. Reg. 45,740. In January 1986, FmHA began to send Notices of Intent to Take Adverse Action — so-called Form 1924-25 [2] — to certain groups of borrowers who had defaulted on their loans. Pet. App. 3. The notice advised the borrower of the delinquency and of the need to contact the FmHA county supervisor to determine whether any loan-servicing alternatives to foreclosure were available. Under those regulations, each borrower could ask to be considered for various loan-servicing options. If a borrower made such a request, no adverse action could occur until after: (1) informal conferences, (2) a formal hearing, (3) a notice of adverse decision, and (4) possibly an administrative appeal. If,

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[1] The class does not include the borrowers in six states. See *Coleman* v. *Block*, 100 F.R.D. 705 (D.N.D. 1983).

[2] The forms which underlie this litigation — FmHA Forms 1924-14, 1924-25, and 1924-26 — are described in the court of appeals' opinion. See Pet. App. 4a-5a.

after that process, the borrower was not found eligible for any loan-servicing options, he would then receive notice that his loan was being accelerated. Pet. App. 3a.

2. In February 1986, petitioners filed a first amended supplemental class action complaint. The supplemental complaint was an attempt to stop the new FmHA regulations from going into effect. Pet. App. 3a & n.2. The supplemental complaint's principal claim (Claim 10) was that the notice forms 1924-25 and 1924-26 violated the Fifth Amendment guarantee of due process. See, *e.g.*, Pet. App. 5a. Petitioners moved for a preliminary injunction that would have precluded FmHA from sending those notices to delinquent borrowers. On March 3, 1986, the district court denied petitioners' request, except in one minor respect not relevant here. *Coleman* v. *Block*, 632 F. Supp. 1005 (D.N.D. 1986). Accordingly, FmHA proceeded to send notices to delinquent borrowers and to consider borrowers for loan-servicing options under FmHA regulations. By May 7, 1987, approximately 14,000 borrowers had either not pursued or had exhausted all administrative appeals; 1000 of these borrowers had lost title to the secured property through foreclosure. See Pet. App. 7a, 26a-28a.

3. On May 7, 1987, the district court granted summary judgment largely in favor of FmHA. The court dismissed 11 of plaintiffs' 14 claims in their entirety; it dismissed, in part, two other claims.[3] See Pet. App. 3a-4a, 24a. One of those two claims was Claim 10, which was at issue in the court of appeals.

The major thrust of Claim 10 was petitioners' due process challenge to Form 1924-25 — the "Notice of Intent to Take Adverse Action." The district court rejected

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[3] The remaining claim was not addressed by the court because it was proceeding to settlement.

petitioners' challenge. It ruled that Form 1924-25 embodied a reasonable compromise between the dual goals of providing complete notice of the various loan-extension or loan-replacement programs and ensuring that the notice could be understood by its intended recipients. Pet. App. 20a.

The district court agreed with petitioners, however, that Form 1924-26 — the "Borrower Acknowledgement of Notice of Intent to Take Adverse Action" — was inadequate. That form directed the borrower to return to the FmHA (within 30 days) the form after the borrower had signified which of the loan-servicing options or other alternatives (appeal, curing defaults, or liquidation) he preferred. The district court noted that the choices made by the borrower on the form could be binding. Pet. App. 5a, 21a-22a. And the court stated: "Because of the potential impact of this form, and particularly because of the number and complexity of the options available, the notice given borrowers must be both clear and comprehensive." *Id.* at 22a. The court found, however, that Form 1924-26 failed under that standard. *Ibid.* In particular, the court ruled that Form 1924-26 did not take into account the facts that the borrower may have more than one loan and FmHA may have more than one reason for the intended adverse action. *Id.* at 23a-24a. Thus, the district court ruled that Form 1924-26 was inadequate under the Due Process Clause. *Id.* at 24a.

To remedy that perceived violation, the court ordered three types of injunctive relief. First, it ordered FmHA to amend Form 1924-26 by adding a prominent statement declaring that an explanation of the various options listed on the form, as well as the effect of choosing one of them, was available at the county FmHA office. Pet. App. 24a. Second, it required FmHA to amend Form 1924-26 by allowing borrowers to choose separate options for each

loan and for each reason given for each of FmHA's proposed actions. *Id.* at 25a. And third, the court ordered FmHA to file with the court and to deliver to petitioners' counsel, within 30 days, a comprehensive and clear explanation of each of the options listed on Form 1924-26. *Id.* at 24a-25a.

4. On June 2, 1987, the court granted additional injunctive relief. Pet. App. 26a-28a. The court divided the class into subgroups on the basis of how far through the loan-servicing process a plaintiff had progressed. The court then ordered the following: (1) for all class members whose loans had not been accelerated prior to May 7, 1987, FmHA was enjoined from accelerating such loans without providing new notices and without making available all loan-servicing options provided for in the corrected forms (Pet. App. 28a); (2) FmHA was required to reverse the loan accelerations for all borrowers whose loans were accelerated between May 7, 1987, and June 2, 1987 (*ibid.*); and, (3) with respect to borrowers whose loans had been accelerated prior to May 7, 1987, but who still retained title to their property as of June 2, 1987,[4] the court enjoined FmHA from proceeding further with foreclosure proceedings until the court was satisfied that the additional written explanations and corrected forms were available in each county office. *Ibid.*

5. Both sides filed cross-appeals. Meanwhile, Congress adopted the Agricultural Credit Act of 1987, Pub. L. No. 100-233, Tit. VI, §§ 601-626, 101 Stat. 1665-1685 (Credit Act). The court of appeals ruled that the Credit Act mooted the cross-appeals. Pet. App. 1a-17a. The court of appeals observed that the legislative history of the Credit Act made it very clear that the Act was intended to address this specific litigation. The court stated that

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[4] About 13,000 class members fell within this subgroup. Pet. App. 7a.

"Congress's obvious intent was that the 1987 Act would function as a legislative enactment of the remedy for the grievances presented in this case." *Id.* at 14a. Accordingly, it vacated the district court's injunction and remanded the case to the district court with directions to dismiss the action as moot. *Id.* at 17a.

The court of appeals rejected petitioners' argument that the claims of some class members remained alive because they sought more relief than was provided by the Credit Act. Pet. App. 12a-16a. Under the Credit Act, borrowers whose loans were accelerated before May 7, 1987, but who still retained title to their property when the district court entered its June 2, 1987, order, were entitled to "the release of up to $18,000 of security income over twelve months to pay the essential household and farm operating expenses." *Id.* 12a.[5] Petitioners argued that some class members might have received greater releases of security income if they had prevailed on their due-process claims before the Credit Act was adopted. The court of appeals held, however, that it "lack[ed] the power to add or subtract from the remedy enacted by Congress." *Id.* at 14a. The court stated:

> [It] is only a statute that entitles an FmHA borrower to a release of income from the sale of secured crops: Nothing in the Constitution itself guarantees farmers such a security income release. Although plaintiffs might obtain injunctive relief ordering the provision of statutory benefits denied without due process, courts have no further remedial power when Congress validly amends the statute authorizing benefits.

Id. at 16a.

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[5] The phrase "security income" refers to income derived from the sale of crops and goods in which FmHA has acquired security interests under the loan agreements.

ARGUMENT

The decision of the court of appeals is correct and it does not conflict with the decision of any other court. Moreover, as petitioners admit (Pet. 9), this case will not have any future importance. [6] Accordingly, no further review is warranted.

1. The sole issue presented relates to the group of 13,000 borrowers whose debts were accelerated prior to May 7, 1987, and who still retained title to their property as of June 2, 1987. [7] With regard to that group, the court of appeals accurately recognized that, in some respects, "the [Credit] Act mandates more relief than the District Court actually ordered." Pet. App. 12a. The Credit Act required FmHA to reconsider the debts of that group of borrowers so that the borrowers would have a fair chance to avoid acceleration and foreclosure. The procedural relief enacted by Congress was essentially similar to the remedy ordered by the trial court. The Credit Act also required FmHA to act on those loans within 12 months, and it provided for the release of security income to pay for living and operating expenses during that reconsideration period. The amount of security income releases was limited to $18,000. § 611, 101 Stat. 1673.

The court of appeals, of course, properly looked to the law as it existed when it ruled. See, *e.g.*, *United States Dep't of Justice* v. *Provenzano*, 469 U.S. 14, 15 (1984); *Kremens* v. *Bartley*, 431 U.S. 119, 128-132 (1977); *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 165 (1975); *Fusari* v. *Steinberg*, 419 U.S. 379, 387 (1975). In this case, Congress

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[6] Petitioners state that "this is a case of first, and possibly last, impression in which the interpretation of these legislative provisions will be considered." Pet. 9.

[7] The court of appeals' opinion refers to this group as the "second group" of borrowers. See Pet. App. 7a-8a.

adopted the Credit Act with this litigation in mind, [8] and Congress added subsection (f)(3) to 7 U.S.C. 1985 to address the specific question of security-income releases for any "borrower whose account was accelerated on or after November 1, 1985, and on or before May 7, 1987." Moreover, the statute's language is plain — release of security income is limited to $18,000 during one year. See 7 U.S.C. 1985(f)(3). Accordingly, Congress has unambiguously provided a remedy for petitioners' due process claim — a fair process for reconsideration by FmHA and the release of up to $18,000 in security income during that process. See Pet. App. 48a-55a.

2. Petitioners argue (Pet. 9-20) that, under prior law, some of the borrowers in the relevant group might have received income releases that exceeded $18,000 if they had obtained all the relief that they sought in the trial court.[9] That may be true but it is wholly irrelevant. A release of security income is a statutory "benefit"; a delinquent borrower is not entitled to such a release under the Constitution or any loan document. And under the Credit Act, Congress has expressly limited such releases to $18,000 per year. Accordingly, petitioners' prior request for a remedy that might have provided a greater release of security income is moot. See generally *Atkins* v. *Parker*, 472 U.S. 115, 129-130 (1985) ("a welfare recipient is not

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[8] The Credit Act was designed to implement the district court's *Coleman* decisions. See, *e.g.*, S. Rep. No. 230, 100th Cong., 1st Sess. 6 (1987) (the loan-restructuring provisions "are intended to carry out the intent of the *Coleman* decisions in the context of this reform of FmHA practices"); *id.* at 38 (the Credit Act's notice section is "based on careful analysis of the *Coleman* opinions and is designed to address, for the future, the notice issues raised in that case"). See also Pet. App. 9a, 14a.

[9] The prior law did not have the $18,000 cap but only allowed for releases prior to acceleration of the debt. See Pet. App. 47a.

deprived of due process when the legislature adjusts benefit levels" because "the legislative determination provides all the process that is due") (citations omitted).

Finally, the court of appeals correctly ruled that the Credit Act itself did not unconstitutionally apply retroactively to deprive farmers of income-release rights. Pet. App. 16a. This Court in *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984), made it clear that:

> the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.

Here, the court of appeals correctly ruled that the retroactive application of the Credit Act to the question of income release was justified by the need to allocate FmHA resources fairly, which "is definitely the kind of 'rational legislative purpose' which passes the constitutional test for retroactive legislation." Pet. App. 16a.[10]

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[10] Indeed, petitioners have not challenged that holding.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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